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Resolution of inquiry

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RESOLUTION OF INQUIRY.

FEBRUARY 15, 1887.—Laid on the table and ordered to be printed.

Mr. BRAGG, from the Committee on Military Affairs, submitted the following

REPORT:

[To accompany House Mis. Doc. 87.]

The Committee on Military Affairs, to whom was referred the following resolution, to wit,

Whereas it is charged that on the 13th day of January, 1887, a squad of soldiers, said to belong to Company L, Fifth United States Cavalry, fired upon certain persons, residents of Sumner County, Kansas, who were temporarily in the Indian Territory, but not to exceed 10 miles from their homes: Therefore,

Be it resolved, That the Secretary of War be requested to inform the House whether such troops did, on or about the date aforesaid, fire upon any person or persons in said Territory, and if so report the facts connected therewith, and whether said troops acted under orders,

submit the following report thereon:

The committee have procured, through the office of the Secretary of War, the following information from the military authorities touching the subject-matter of the resolution:

WAR DEPARTMENT,
Washington City, February 9, 1887.

SIR: Inviting attention to previous correspondence in regard to the allegation of Louis Weythman that on the 13th of January last a squad of soldiers, said to belong to Company L, Fifth Cavalry, fired upon certain persons who were temporarily in the Indian Territory, I have the honor to inclose a copy of a letter of the 20th ultimo from Capt. W. C. Forbush, Fifth Cavalry, from which it will be seen that on the 13th ultimo the sergeant in charge of the Chikaskia River discovered a party of ten civilians and eight teams surreptitiously taking wood from the Cherokee strip of the Indian Territory. The party were ordered to halt by a member of the sergeant's detachment, and refusing to obey they were compelled by force of arms to halt. It appears from the report that only such force was used as was absolutely necessary in making the arrest.

The affidavit of Mr. Weythman, and the proposed resolution presented in the House of Representatives on the 19th ultimo, calling upon the Secretary of War for information in regard to the allegation of Mr. Weythman, are herewith returned in accordance with the request contained in your letter of the 21st ultimo on this subject.

Very respectfully, your obedient servant,

WM. C. ENDICOTT,
Secretary of War.

Hon. E. S. BRAGG,
Chairman Committee on Military Affairs, House of Representatives.

CAMP MARTIN, IND. T.,
January 20, 1887.

The ASSISTANT ADJUTANT-GENERAL,
Headquarters Department of the Missouri, Fort Leavenworth, Kans.:

SIR: I have the honor to inclose herewith papers from the United States district attorney at Topeka, Kans., pertaining to the action taken by a detachment of troops under my command about the 13th of January last.

RESOLUTION OF INQUIRY.

The facts are these: On the 13th instant, the sergeant in charge on the Chikaskia River, Ind. T., discovered a party of ten civilians, with eight loaded teams, surreptitiously taking wood from the Cherokee strip of the Indian Territory, about 8 or 10 miles from the Kansas State line. The party were ordered to halt by a member of the sergeant's detachment, but it refused to obey the order, calling the soldiers approbrious epithets, and leveling their fire-arms on them; whereupon the non-commissioned officer dismounted his men and compelled the said party to halt by force of arms, killing one horse. The sergeant only used such force as was absolutely necessary to make the arrest, when the firing ceased. I think the civilians took the steps they did solely from the belief that under no circumstances whatever would the soldiers fire upon them.

I have the arms taken from these men in my possession at this camp, which I hold subject to the disposition of the department commander. A more detailed report will be submitted if it is desired.

Very respectfully, your obedient servant,

W. C. FORBUSH,
Captain, Fifth Cavalry, Commanding.

P. S.—I have informed the United States district attorney at Topeka, Kans., that his letter of the 19th instant, with inclosure (affidavit of one Weythman), has been referred to you for such action as the department commander may deem proper.

W. C. FORBUSH,
Captain, Fifth Cavalry, Commanding.

TOPEKA, KANS., January 19, 1887.

Capt. L. FORBUSH,
Commanding Company L, Fifth Cavalry,
Camp on Chikaskia Creek, Arkansas City, Kans.:

SIR: I have the honor to inclose herewith a copy of an affidavit subscribed by Louis Weythman and others, detailing the circumstances of an embrolio that took place between certain members of your troop and Weythman and others, in the Indian Territory on the 14th instant.

Please favor me with a statement of the facts at your earliest convenience, returning with such statement the enclosed copy of affidavits.

Very respectfully,

W. C. PERRY,
United States Attorney.

STATE OF KANSAS,
Cowley County, ss:

On this 14th day of January, 1887, personally came before me, the undersigned, notary public in and for the county aforesaid, Louis Weythman, aged 45 years, who on oath states that he was a soldier in the Union Army and served as a private in the 1st Kansas Infantry and 13th Mo. Infantry.

That on the 13th day of January, 1887, he in company with James Dunbar, W. T. Rollier, John Arnsbrake, Joseph Kelley, David Pettegrew, E. B. McClasky, Oscar Ridgway, William Kelley, and Frank Arnsbrake, citizens and farmers of Guelph Township, Sumner County, Kansas, left their homes on the State line and went into the Indian Territory about 8 miles, to Dry Creek on Cherokee Outlet, with 8 teams, for wood; that they obtained wood that had been previously cut for about 5 years, and was old and sap-rotten and drift-wood, and as they were returning home in the afternoon they were attacked by 6 U. S. soldiers in command of Sergt. B. W. Watkins, Co. L., 5th Cav., who fired on them at a distance of 600 yards with long-range guns, and fired about 30 shots at said persons and their teams. A horse belonging to W. T. Rollier was killed by them, the wagons were hit several times, and the bullets whistled like a skirmish. That they were taken prisoners by said sergt. and taken to his camp, and afterwards taken under guard to the camp of Capt. Forbush, commanding the company, 15 miles distant, arriving at his camp at 3 o'clock a. m. on Jan'y. 14, and were kept under guard out doors without shelter or blankets. The party were given rations and the horses fed hay 200 pounds for 15 horses.

Capt. Forbush informed affiant that his orders were to shoot and kill all stock of persons resisting arrest and kill persons so resisting.

That at 2 o'clock p. m. they were taken under guard 13 miles to the State line, 4 miles south of Arkansas City and released; that Capt. Forbush took from said party 5 guns. The said guns were loaded with small shot, and said party had no ammunition except the charges in said guns. Affiant states that they in no way resisted or refused to be arrested, and did not know why they were fired on until after arrested. That when arrested the said sergt. threatened to shoot into the party, and ordered his men to present arms and make ready to fire.

Affiant on oath states that he believes such conduct to be against the rights of citizens and an outrage for the military to fire upon citizens, and asks that this matter be presented to Congress by Hon. I. R. Peters, for investigation; and further sayeth not.

LOUIS WEYTHMAN.

Subscribed and sworn to before me this 14th January, 1887.

M. G. HOOVER,
Notary Public.

STATE OF KANSAS,
Cowley County, ss:

W. T. Rollier and James Dunbar, being sworn, say the foregoing statement of Louis Weythman is true, to their own knowledge.

JAMES DUNBAR.
W. T. ROLLIER.

Subscribed and sworn to before me this 14th January, 1887.

M. G. HOOVER.
Notary Public.

HEADQUARTERS DEPARTMENT OF THE MISSOURI,
Fort Leavenworth, Kansas, January 24, 1887.

Official copy respectfully forwarded to headquarters Division of the Missouri for the information of the division commander.

O. B. WILLCOX,
Brigadier-General, Commanding.

[First indorsement.]

HEADQUARTERS DIVISION OF THE MISSOURI,
Chicago, January 29, 1887.

Respectfully forwarded to the Adjutant-General of the Army.

The commanding general Department of the Missouri has been directed to obtain a more detailed report of the transaction at once, and forward it.

ALFRED H. TERRY,
Major-General, Commanding.

From the report made by the officer it would seem that the supposed outrages consist merely in the discharge of a military duty made necessary by the conduct of the complainants.

The whole subject seems also to have been brought to the notice of the civil authorities of the vicinage, who are fully empowered to see that justice is done, and the crime committed, if any, punished.

Entertaining these views, the committee report back the resolution, with the recommendation that no further action be taken thereon and that the same do lie upon the table.

[Indorsements on 434, A. G. O., 1887.]

HOUSE COMMITTEE ON MILITARY AFFAIRS,
January 21, 1887.

Hon. E. S. Bragg, chairman, submits for examination and report House resolution calling for information in relation to charge that on January 13 a squad of soldiers of Company L, Fifth Cavalry, fired upon certain persons, resident of Sumner County, Kansas, who were temporarily in the Indian Territory, &c. Asks return of inclosures with reply.

[First indorsement.]

WAR DEPARTMENT,
ADJUTANT-GENERAL'S OFFICE,
Washington, January 25, 1887.

Official copy respectfully referred, through headquarters Division of the Missouri, to the commanding-general, Department of the Missouri, for immediate investigation and report. These papers to be returned with the least practicable delay.

By order of the Secretary of War.

J. C. KELTON,
Assistant Adjutant-General.

RESOLUTION OF INQUIRY.

[Second indorsement.]

HEADQUARTERS DIVISION OF THE MISSOURI,
ASSISTANT ADJUTANT-GENERAL'S OFFICE,
Chicago, January 27, 1887.

Respectfully referred to the commanding-general, Department of the Missouri.
By command of Major-General Terry.

H. C. CORBIN,
Assistant Adjutant-General.

[Third indorsement.]

HEADQUARTERS DEPARTMENT OF THE MISSOURI,
Fort Leavenworth, Kans., February 5, 1887.

Respectfully returned through headquarters Division of the Missouri, inviting attention to the inclosed reports of Capt. W. C. Forbush, Fifth Cavalry, the officer in command of the troops that arrested Wythman and party, dated January 20 and February 1, 1887. It will be seen from these papers that, under their orders, the troops used only such force as was absolutely necessary in the arrest and removal of this unauthorized party of intruders from the Indian Territory; that the soldiers did not fire upon the persons of said unlawful intruders, and that their action was lawful, prudent, and commendable. This duty is not only delicate but disagreeable to the military, but it is compulsory under the law, and it must be executed with sufficient force to prevent the Indians themselves from resenting the despoliation of what they consider their own land and property, and to preserve the peace of the country.

O. B. WILLCOX,
Brigadier-General, Commanding.
TOPEKA, KANS.,
January 19, 1887.

Capt. L. FORBUSH,
Commanding Company I, Fifth Cavalry,
Camp on Chikaskia Creek, Arkansas City, Kans.:

SIR: I have the honor to inclose herewith a copy of an affidavit subscribed by Lewis Wythman and others, detailing the circumstances of an imbroglia that took place between certain members of your troop and Wythman and others in the Indian Territory on the 14th instant. Please favor me with a statement of the facts at your early convenience, returning with such statement the inclosed copy of affidavits.

Very respectfully,

W. C. PERRY,
United States Attorney.

CAMP MARTIN, IND. T.,
January 20, 1887.

The ASSISTANT ADJUTANT-GENERAL,
Headquarters Department of the Missouri,
Fort Leavenworth, Kans.:

SIR: I have the honor to inclose herewith papers from the United States district attorney at Topeka, Kans., pertaining to the action taken by a detachment of troops under my command about the 13th of January last.

The facts are these: On the 13th instant the sergeant in charge on the Chikaskia River, Indian Territory, discovered a party of ten civilians, with eight loaded teams, surreptitiously taking wood from the Cherokee strip of the Indian Territory, about 8 or 10 miles from the Kansas State line. The party was ordered to halt by a member of the sergeant's detachment, but it refused to obey the order, calling the soldiers opprobrious epithets and leveling their fire-arms upon them; whereupon the non-commissioned officer dismounted his men and compelled the said party to halt by force of arms, killing one horse.

The sergeant only used such force as was absolutely necessary to make the arrest when the firing ceased. I think the civilians took the steps they did solely from the belief that under no circumstances whatever would the soldiers fire upon them.

I have the arms taken from these men in my possession at this camp, which I hold subject to the disposition of the Department commander. A more detailed report will be submitted if it is desired.

Very respectfully, your obedient servant,

W. C. FORBUSH,
Captain Fifth Cavalry, Commanding.

P. S.—I have informed the United States district attorney at Topeka, Kans., that his letter of the 19th instant with inclosure (affidavit of one Weythman) has been referred to you for such action as the Department commander may deem proper.

W. C. FORBUSH,
Captain Fifth Cavalry, Commanding.

CAMP MARTIN, IND. T., February 1, 1877.

The ASSISTANT ADJUTANT-GENERAL,
Headquarters Department of the Missouri, Fort Leavenworth, Kans. :

SIR: In compliance with instructions from Department headquarters, dated January 29, 1877, I have the honor to make the following report concerning the action taken by a detachment of men under my command in the vicinity of the Chikaska River, Indian Territory, on the 13th of January, 1877.

In obedience to orders from Department headquarters I placed a detachment of Troop L, Fifth Cavalry, under command of Sergeant Benjamin W. Cavelle, same troop and regiment, at the junction of Bitter Creek with the Chikaskia proper, for the purpose of patrolling said stream and its tributaries, to arrest all wood-choppers and timber cutters, hunters, and trappers, squatters, and intruders of any description, taking care to explain at some length what constituted an intruder; and to conduct them to this camp to be disposed of by higher authority or take them to the State line and discharge them, according to the nature and degree of the offense, basing my action as far as possible upon the requirements of the Revised Statutes of the United States.

The sergeant was directed to treat everybody politely as long as they were entitled to such treatment and to use such force only as was necessary to effect the arrest of the offenders; but he was given to understand he would be held responsible if sufficient force was not used to make the arrests and only a sufficient force. In other words the force used was to be in proportion to the resistance, but the arrests must be made.

On the 13th instant, Sergeant Benjamin W. Cavelle, Privates Robert H. Keeling, James C. Flynn, Henry S. Corp, Seth Walker, and Edward N. Watts, all of Troop L, Fifth Cavalry, discovered ten men provided with arms, and eight wagons loaded with wood and green timber upon one of the tributaries of the Chikaskia River and surreptitiously taking it away in the direction of the Kansas State line. Sergeant Cavelle sent privates Keeling and Flynn to the leading team to demand their surrender. They were received with curses and expressions of contempt, the offenders at the same time raising and cocking their fire-arms.

Privates Keeling and Flynn halted, allowed the teams to pass by them and then withdrew to the other members of their party. The intruders upon seeing this arose in the wagons in a body, calling out to the soldiers in opprobrious epithets and daring them to combat. (Affidavit hereto appended and marked A.)

Upon this Sergeant Cavelle dismounted his men, turned the horses over to one of the troopers, formed a line with intervals and opened fire upon the horses of the leading team, the object being to compel the citizens to halt. As soon as one of the horses of this team fell, all of the teams stopped, the firing ceased and the offenders surrendered. The prisoners were taken to Sergeant Cavelle's camp on the Chikaska River, where they were provided with supper from the soldier's rations and after several hours of rest were taken by moonlight to this camp, arriving between 3 and 4 o'clock a. m. Here they were provided with rations for breakfast, and though forage for their horses is not allowed, yet they were fed with hay at the expense of my own animals. They were treated with more consideration than they were entitled to and any hardship they experienced was due to their own stubbornness and rebellious spirit, necessitating the more than ordinary vigilance of the guard.

After investigating the matter, I directed a party of men from my command to conduct the wood thieves to the State line and discharge them, informing them that their arms would be held by me subject to the disposition of the Department commander.

I took this action for the reason that the U. S. circuit court commissioner, at Arkansas City, Kans., had informed me by letter that he would issue no more warrants for the above classes of offenders.

From this announcement till the arrest of Wythman and party the execution of my orders was more difficult than ever before, the citizens of the State of Kansas believing or pretending to believe that if the civil authorities would not act in the execution of the laws, that I had no authority to keep them from infringing upon the Indian Territory, and the United States troops were thus held in defiance. Since the arrest of the party in question there has been no attempt at intrusion of the above character upon the Cherokee outlet as far as my jurisdiction extends.

After a personal interview with all of the members of the patrolling party and from the affidavit hereto appended and marked A, I am absolutely certain that only such force was used by the detachment of troops as was necessary for the faithful discharge of their duty. Had they used less, they would have brought discredit upon themselves, their troop, and the service of the United States.

Respectfully submitted.

W. C. FORBUSH,
Captain Fifth Cavalry, Commanding.

RESOLUTION OF INQUIRY.

CAMP MARTIN, *Indian Territory*, ss :

Personally appeared before me, Robert Loudon, first lieutenant, Fifth Cavalry, Privates Robert Keeling and James C. Flynn, Troop L, Fifth Cavalry, who, being duly sworn according to law, depose and say :

That on the 13th day of January, 1887, they were members of a party under command of Sergeant B. W. Cavelle, same troop, patrolling the left bank of the Chikaskia River in the Cherokee outlet; that about 3 o'clock in the afternoon and when the party was about 10 miles from the State line, ten men, citizens of the State of Kansas, and eight wagons loaded with wood and green timber, were discovered moving in the direction of the Stateline; that when Sergeant Cavelle's party had approached to within about 400 yards of the citizens deponents were ordered to ride ahead and stop the wagons; that they rode to the leading team and directed its driver to stop; that this citizen raised and cocked his gun and said to the deponents, "Do your talking here, God damn you"; that deponents then stopped till all the wagons had passed and they had counted the guns in the possession of the citizens; that they then rode back to Sergeant Cavelle's party and that as they rode away the citizens stood up in their wagons flourishing their guns and shouted, "Come on, you God damned sons of bitches! Come on and do something!" That Sergeant Cavelle then dismounted his party and ordered Private Keeling to fire a shot in front of the leading team; that he did so, but the citizens paid no attention to it; that Sergeant Cavelle then ordered his party to kill a horse in the leading team, and that this was done; that as soon as the horse fell the wagons stopped, the firing ceased, and the citizens surrendered.

And further deponents say from their knowledge of all the facts it was impossible for Sergeant Cavelle to have arrested the citizens without firing on them, and that as soon as the wagons stopped the firing ceased; that after the citizens surrendered they were taken to Sergeant Cavelle's camp, about 7 miles distant; the wagons were unloaded, the horses unhitched, and the citizens fed from therautions of the party; that from the talk and manner of the citizens it was evident that the longer they were held the more troublesome they would become, and that when the moon had risen they were taken to Camp Martin, Indian Territory, and there turned over to Capt. W. C. Forbush, Fifth Cavalry, commanding Troop L, Fifth Cavalry.

Deponents further say not.

ROBERT H. KEELING,
Private, Troop L, Fifth Cavalry.
JAMES C. FLYNN,
Private, Troop L, Fifth Cavalry.

Sworn to and subscribed before me this 1st day of February, 1887.

R. LOUDON,
Lieutenant, Fifth Cavalry.

I certify that paragraph 1752, Army Regulations, has been complied with.

W. C. FORBUSH,
Captain, Fifth Cavalry.

CAMP MARTIN, *Indian Territory* :

Personally appeared before me, Robert Loudon, first lieutenant, Fifth Cavalry, Sergeant B. W. Cavelle, and Privates E. N. Watts, Seth Walker, and Henry S. Corp, Troop L, Fifth Cavalry, who, being duly sworn according to law, depose and say that they have heard the foregoing affidavit read, and that its contents, except in so far as they refer to the conversation between Privates Keeling and Flynn and the citizens, which occurred beyond their hearing, are true of their own knowledge.

EDWARD N. WATTS,
Private, Troop L, Fifth Cavalry.
HENRY S. CORP,
Private, Troop L, Fifth Cavalry.
BENJAMIN N. CAVELLE,
Sergeant, Troop L, Fifth Cavalry.
SETH WALKER,
Private, Troop L, Fifth Cavalry.

Sworn to and subscribed before me this 1st day of February, 1887.

R. LOUDON,
Lieutenant, Fifth Cavalry.

I certify that paragraph 1752, Army Regulations, has been complied with.

W. C. FORBUSH,
Captain, Fifth Cavalry.

RESOLUTION OF INQUIRY.

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[Fourth indorsement.]

HEADQUARTERS DIVISION OF THE MISSOURI,
Chicago, February 8, 1887.

Respectfully returned to the Adjutant-General of the Army.

ALFRED H. TERRY,
Major-General, Commanding.

Official copy.

R. C. DRUM,
Adjutant-General.

ADJUTANT-GENERAL'S OFFICE,
February 11, 1887.

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